

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Oksana Matveeva	Team: Squad #8	CCRB Case #: 201808219	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 10/05/2018 3:35 PM	Location of Incident: [REDACTED]	Precinct: 42	18 Mo. SOL 4/5/2020	EO SOL 11/20/2020	
Date/Time CV Reported Fri, 10/05/2018 6:33 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 10/05/2018 6:33 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Rubenson Marcellus	14793	956063	042 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Rubenson Marcellus	Abuse: Police Officer Rubenson Marcellus threatened to arrest § 87(2)(b) [REDACTED]	[REDACTED]
B.POM Rubenson Marcellus	Force: Police Officer Rubenson Marcellus used physical force against § 87(2)(b) [REDACTED]	[REDACTED]

Case Summary

On October 5, 2018, § 87(2)(b) filed this complaint with the CCRB via website. On October 5, 2018, § 87(2)(b) also filed this complaint with the 42nd Precinct in person. The complaint was forwarded to IAB and IAB Log #2018-39140 was generated. The complaint was then forwarded to the CCRB, generating IAB Log #2018-39652, and was received by the CCRB on October 10, 2018.

On October 5, 2018, at approximately 3:35 p.m., § 87(2)(b) was involved in a verbal dispute with a taxi driver. Police Officer Rubenson Marcellus, assigned to the 42nd Precinct, arrived on scene. PO Marcellus threatened to arrest § 87(2)(b) if she did not leave the cab (**Allegation A: Abuse of Authority**, § 87(2)(g)). PO Marcellus then pulled § 87(2)(b) from the taxi (**Allegation B: Force**, § 87(2)(g)).

There was body-worn camera video footage available for this incident [Board Review 03-04 and 12-15]. § 87(2)(b) was not arrested or issued a summons as a result of this incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Rubenson Marcellus threatened to arrest

§ 87(2)(b)

It is undisputed that PO Marcellus threatened to arrest § 87(2)(b)

§ 87(2)(b) failed to appear for her interview scheduled on November 20, 2018 and December 3, 2018 and did not provide her sworn statement. This case is proceeding based on the body-worn camera video footage in the absence of a sworn statement.

According to § 87(2)(b) phone statement [Board Review 01], a taxi driver, who did not identify himself, flagged down patrol cars containing Police Officer Rubenson Marcellus, Police Officer Miguel Castillo, Police Officer Kadeen Powell and Police Officer Jonathan Baez. They approached the taxi and the driver said to the officers that he wanted § 87(2)(b) to leave his vehicle, however she refused to do so. § 87(2)(b) explained to the officers that the driver asked for a payment upfront, however she believed that it was unfair to charge cab fare upfront and so she refused to pay. PO Powell asked the driver if he felt safe driving to the destination area and the driver responded that he had no safety concerns. § 87(2)(b) told the officers that the driver confirmed that he felt safe and the only reason why he wanted her to exit the vehicle was because she did not want to pay him upfront. PO Marcellus told § 87(2)(b) that she had to exit the vehicle and suggested that she find another taxi. § 87(2)(b) acknowledged that PO Marcellus instructed her numerous times to exit the vehicle. § 87(2)(b) further acknowledged that she did not follow his commands. PO Marcellus told her that she had to exit the cab or she would be arrested. § 87(2)(b) asked PO Marcellus what she would be arrested for. PO Marcellus told her that he would take her to the stationhouse "for resisting". § 87(2)(b) stretched her arms in front of her to be handcuffed, however he responded that he would do things "his way" and did not handcuff her.

In PO Marcellus's statement to the CCRB [Board Review 02], PO Marcellus was the driver and PO Castilo was a passenger. At the intersection of § 87(2)(b), on the northbound side of § 87(2)(b), he noticed a taxi driver flag down a marked vehicle travelling in front of him. The marked vehicle pulled over and PO Powell and PO Baez, assigned to the 42nd Precinct, walked towards the taxi. PO Marcellus stopped his marked vehicle and followed them. The driver explained to PO Marcellus that when he picked up § 87(2)(b) she refused to pay upfront and then refused to exit his vehicle when he refused service. PO Marcellus instructed § 87(2)(b) to exit the vehicle several times and she did not comply. PO Baez also asked § 87(2)(b) to exit the taxi and she did not comply. § 87(2)(b) responded that according to the TLC law, the taxi driver was required to transport her to her desired destination. PO Marcellus remarked in his interview that he did not have personal knowledge of the TLC law relating to this dispute, however he knew that a taxi customer could take a driver's license number and vehicle's plate number to file a complaint against the driver, which he suggested § 87(2)(b) refused to follow his instructions. PO Marcellus further remarked that during the incident he was concerned that § 87(2)(b) was trespassing personal property, however he did not discuss with other officers what steps to take. PO Marcellus instructed § 87(2)(b) to exit the vehicle or she would be arrested. § 87(2)(b) agreed to be arrested and extended her arms towards PO Marcellus to be handcuffed. PO Marcellus instructed § 87(2)(b) again to exit the taxi and she did not comply.

In PO Marcellus's body-worn camera [Board Review 03], at the 1:04 time stamp, § 87(2)(b) stated that according to the TLC Law, the taxi driver had no right to refuse service.



§ 87(2)(b) explains TLC Law to PO Marcellus.mp4

In PO Baez's body-worn camera [Board Review 04], at the 00:50 time stamp, § 87(2)(b) stated that she was going to work to the § 87(2)(b). PO Baez suggested § 87(2)(b) take a driver's license number and vehicle's plate number to file a complaint against the driver. At the 3:55 time stamp, PO Marcellus stated that the taxi driver was not required to transport her if he was not willing to. At the 4:28 time stamp, § 87(2)(b) stated that a TLC driver had no right to refuse his service once a passenger was in his vehicle and the destination address was provided. PO Powell confirmed that § 87(2)(b) was correct about the TLC Law, however she noted that if the driver had safety concerns, he had the right to refuse service. At the 4:46 time stamp, PO Powell asked the taxi driver if he had any safety concern and the taxi driver provided a negative response.



TLC law dispute.mp4

After the taxi driver stated that he had no safety concerns, PO Marcellus and PO Baez instructed § 87(2)(b) to step out of the vehicle several times and she refused to do so. PO Marcellus instructed § 87(2)(b) to exit the cab or she would be arrested.



Threat of Arrest.mp4

New York State Penal Law §140.05 regarding trespass states that “A person is guilty of trespass when he knowingly enters or remains unlawfully in or upon premises.” [Board Review 05]

New York City Taxi and Limousine Commission Law §54-20(a)(1) states that “Unless the Driver has justifiable grounds, a Driver must not refuse by words, gestures or any other means, to take a Passenger, including a person with a disability and any service animal accompanying this individual, to any destination within the City of New York, the counties of Westchester or Nassau, or Newark Airport.” [Board Review 06]

New York City Taxi and Limousine Commission Law §54-17(g)(2)(iii) states that “The rate of fare will be the amount shown on the Taximeter for the portion of the trip within the City, plus twice the amount shown on the Taximeter for the portion of the trip outside the City limits.” [Board Review 11]

New York City Taxi and Limousine Commission Law (“TLC Law”) requires drivers to complete trips if they are within the confines of New York City, Westchester and Nassau counties or Newark Airport and the rate of fare should be calculated by the Taximeter. The body-worn camera video captured § 87(2)(b) informing the officers that she was going to § 87(2)(b). PO Marcellus remarked in his interview that he did not have personal knowledge of the TLC Law relating to this dispute and he further acknowledged that he did not discuss it with other officers.

§ 87(2)(b), § 87(2)(g)

Allegation (B) Force: Police Officer Rubenson Marcellus used physical force against

§ 87(2)(b)

It is undisputed that PO Marcellus pulled § 87(2)(b) as he acknowledged doing this, and his actions were captured on the body-worn camera video.

According to § 87(2)(b) phone statement [Board Review 01], after PO Marcellus requested § 87(2)(b) to exit the cab numerous times and she did not comply, PO Marcellus grabbed § 87(2)(b)'s left arm and pulled her out of the vehicle. § 87(2)(b) switched her legs to be able to safely exit the vehicle and exited it.

In PO Marcellus's statement to the CCRB [Board Review 02], PO Marcellus approached § 87(2)(b) grabbed her wrists and while he was taking her out of the vehicle, she moved along with him. § 87(2)(b) did not complain of any pain or injury. PO Marcellus walked her for approximately two feet away from the taxi and onto the sidewalk. PO Marcellus gathered her tablet and purse from the vehicle, returned them to her and closed the passenger door. PO Marcellus acknowledged that he did not discuss with other officers what next steps had to be taken and decided to forcibly remove her from the vehicle on his own.

In PO Baez's body-worn camera [Board Review 04], at the 9:00 time stamp, PO Marcellus approached § 87(2)(b) placed his left hand on § 87(2)(b)'s left wrist, completely extending her arm, and then placed his right hand on § 87(2)(b)'s left arm and forcibly removed her from the vehicle. While he was taking her out of the vehicle, she moved along with him. Then PO Marcellus gathered § 87(2)(b)'s tablet and purse from the vehicle, handed them to her, closed the passenger door and walked back to his marked vehicle.



Forcible removal out of the vehicle.mp4

Patrol Guide Procedure 221-02 subsections 1-4 [Board Review 07] regarding Use of Force states that “When a member of the service must gain compliance, control, or custody of an uncooperative subject, the member should comply with *P.G. 221-01, “Force Guidelines”* and comply with the following: take necessary action to protect life and personal safety of all persons present, including subjects being placed into custody; utilize de-escalation techniques when appropriate and consistent with personal safety, which may reduce or eliminate the need to use force, and increase the likelihood of gaining the subject's voluntary compliance; isolate and contain the subject, if appropriate; and immediately request a supervisor to respond, as soon as appropriate and safety permits.”

§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party [Board Review 08].
- PO Marcellus has been a member-of-service for five years and has been a subject in three CCRB complaint and four allegations, none of which were substantiated:
 - 201507412 involved an allegation of physical force. The complaint was closed as complainant unavailable.
 - 201800447 involved allegations of threat of arrest and discourtesy. The complaint was closed as complainant uncooperative.
 - 201806633 involved an allegation of physical force. The complaint was administratively closed.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation, as § 87(2)(b) failed to cooperate with the investigation.
- On February 7, 2019, a request to determine if a Notice of Claim was filed was submitted. Confirmation from the New York City Office of the Comptroller will be forwarded upon receipt [Board Review 09].
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City [Board Review 10].

Squad No.: 8

Investigator:	_____	Inv. Oksana Matveeva	02/12/2019
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date